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CLERK U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY Van DEPUTY

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

RAMIA SABHERWAL; DONALD T.H.
SMITH,

Plaintiff,

vs.

THE BANK OF NEW YORK MELLON
fka THE BANK OF NEW YORK, AS
TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWALT,
INC., ALTERNATIVE LOAN TRUST
2005-62 MORTGAGE PASS THROUGH
CERTIFICATES 2005-62; AND AS
TRUSTEE FOR THE
CERTIFICATEHOLDERS OF CWALT,
INC., ALTERNATIVE LOAN TRUST
2005-81, MORTGAGE PASS-
THROUGH CERTIFICATES 2005-81
BANK OF AMERICA, N.A.;
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS INC.;
OCWEN LOAN SERVICING, LLC;
REAL TIME RESOLUTIONS, SELECT
PORTFOLIO SERVICING, INC. AND
DOES 1 THROUGH 10, INCLUSIVE.,

Defendants.

CASE NO. 3:11cv2874 WQH BGS
ORDER

HAYES, Judge:

On May 7, 2012, Plaintiffs Ramia Sabherwal and Donald Smith filed a Motion for Leave to File the First Amended Complaint. (ECF No. 18). Plaintiffs attached the proposed First Amended Complaint to the Motion. (ECF No.18-1). On May 25, 2012, Defendants filed an Opposition. (ECF No. 23).

1 Federal Rule of Civil Procedure 15 mandates that leave to amend “be freely given when
 2 justice so requires.” Fed. R. Civ. P. 15(a). “This policy is to be applied with extreme
 3 liberality.” *Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1051 (9th Cir. 2003)
 4 (quotation omitted). In *Foman v. Davis*, 371 U.S. 178 (1962), the Supreme Court offered
 5 several factors for district courts to consider in deciding whether to grant a motion to amend
 6 under Rule 15(a):

7 In the absence of any apparent or declared reason—such as undue delay, bad faith
 8 or dilatory motive on the part of the movant, repeated failure to cure deficiencies
 9 by amendments previously allowed, undue prejudice to the opposing party by
 virtue of allowance of the amendment, futility of amendment, etc.—the leave
 sought should, as the rules require, be “freely given.”

10 *Foman*, 371 U.S. at 182; see also *Smith v. Pac. Prop. Dev. Co.*, 358 F.3d 1097, 1101 (9th Cir.
 11 2004) (citing *Foman* factors).

12 “Not all of the [*Foman*] factors merit equal weight. As this circuit and others have held,
 13 it is the consideration of prejudice to the opposing party that carries the greatest weight.”
 14 *Eminence Capital*, 316 F.3d at 1052 (citations omitted). “The party opposing amendment
 15 bears the burden of showing prejudice.” *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 187
 16 (9th Cir. 1987). “Absent prejudice, or a strong showing of any of the remaining *Foman*
 17 factors, there exists a *presumption* under Rule 15(a) in favor of granting leave to amend.”
 18 *Eminence Capital*, 316 F.3d at 1052 (emphasis in original).

19 Defendants oppose the amendment on the grounds that the claims asserted in the
 20 proposed First Amended Complaint would be subject to dismissal and that granting the Motion
 21 for Leave to Amend would be futile. The Court concludes that Defendants have not made a
 22 sufficiently strong showing of the *Foman* factors to overcome the presumption under Rule
 23 15(a) in favor of granting leave to amend. See *Eminence Capital*, 316 F.3d at 1052. The Court
 24 will defer consideration of any challenge to the merits of the proposed First Amended
 25 Complaint until after the amended pleading is filed. See *Hynix Semiconductor Inc. v. Toshiba*
 26 *Corp.*, No. C-04-4708, 2006 WL 3093812, at *2 (N.D. Cal., Oct. 31, 2006) (“In view of Rule
 27 15(a)’s permissive standard, courts ordinarily defer consideration of challenges to the merits
 28 of a proposed amended pleading until after leave to amend is granted and the amended

1 pleading is filed.”).

2 IT IS HEREBY ORDERED that the Motion for Leave to File the First Amended
3 Complaint filed by Plaintiffs (ECF No. 18) is GRANTED. Plaintiffs shall file the First
4 Amended Complaint attached to the motion (ECF No. 18-1) within ten days of the date of this
5 order.

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7 DATED: 7/18/12


8 WILLIAM Q. HAYES
9 United States District Judge
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